

REMARKS

Claims 1-14 remain pending in the subject application with claim 1 in independent form. Claims 1-5, 7-10, and 14 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Goodwin et al., U.S. Pat. App. Pub. No. 2004/0022945. Claims 11-13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the '945 Publication in view of O'Reilly et al., U.S. Pat. App. Pub. No. 2004/0052028. Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the '945 Publication in view of Lickfield et al., U.S. Pat. No. 5,484,645. Claim 1 stands as provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claim 8 of co-pending Application No. 10/381,690 (the '945 Publication).

Claim Rejections Under 35 U.S.C. § 102(e)

Relative to the 35 U.S.C. § 102(e) rejections of claims 1-5, 7-10, and 14, the Examiner states that these rejections may be overcome by a showing under 37 CFR §1.132 that any invention disclosed but not claimed in the '945 Publication was derived from the inventor of the instant application and is thus not the invention "by another". Accordingly, the Applicant submits a Declaration under 37 CFR §1.132 which provides that the disclosures of the '945 Publication that are relied upon by the Examiner in supporting the 35 U.S.C. § 102(e) rejections are Applicant's own work, were derived from Applicant, and represent Applicant's invention. Thus, the disclosures of the '945 patent that are relied upon by the Examiner are not "by another" and should not be used to support the 35 U.S.C. § 102(e) rejections. In view of

this Declaration, the Applicant respectfully requests that the 35 U.S.C. § 102(e) rejections of claims 1-5, 7-10, and 14 be withdrawn.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 6 and 11-13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the '945 Publication in view of various other prior art. However, in the context of the § 103(a) rejections, it is worthy to note that, due to 35 U.S.C. § 103(c), the '945 Publication cannot be used in any § 103(a) rejections. More specifically, the '945 Publication is characterized as § 102(e)/103(a) prior art. The '945 Publication is not § 102(a) prior art because the instant patent application enjoys the benefit of a foreign priority date (April 10, 2002) prior to the publication date of the '945 Publication (February 5, 2004). Furthermore, the subject matter of the '945 Publication was clearly developed "by another person" because there is at least one different inventor on the '945 Publication as compared to the inventors of the present application. Additionally, the subject matter of the '945 Publication was commonly owned by, or subject to an obligation of assignment to, the same entity (Dow Corning Corporation), as that of the claimed invention in the instant application. As such, in accordance with § 103(c), the '945 Publication "shall not preclude patentability" and, therefore, cannot be used in any of the § 103(a) rejections. The Applicant respectfully requests that the 35 U.S.C. § 103(a) rejections of claims 6 and 11-13 be withdrawn.

Double Patenting Rejection

Claim 1 stands as provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claim 8 of co-pending Application No.

10/381,690 (the '945 Publication). The Examiner states that a timely filed Terminal Disclaimer may be used to overcome this provisional rejection. Accordingly, the Applicant submits a Terminal Disclaimer for the instant patent application which references co-pending Application No. 10/381,690. In view of this Terminal Disclaimer, the Applicant respectfully requests that the non-statutory obviousness-type double patenting rejection of claim 1 be withdrawn.

Conclusion

Due to the reasoning set forth above, the Applicant respectfully requests that the 35 U.S.C. § 102(e) rejections of claims 1-5, 7-10, and 14, and the 35 U.S.C. § 103(a) rejections of claims 6 and 11-13, be withdrawn such that these claims are allowable. Further, the Applicant respectfully requests that the non-statutory obviousness-type double patenting rejection of claim 1 be withdrawn, such that this claim is also allowable.

It is respectfully submitted that the application is now presented in condition for allowance, which allowance is respectfully solicited.

If any additional fees are necessary to respond to the outstanding Office Action, you are hereby authorized to charge such fees to Deposit Account No. 08-2789 in the name of Howard & Howard.

**Respectfully submitted,
HOWARD & HOWARD ATTORNEYS**

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Date

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